COURT NO.10

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 267 of 2004
Old F.A.F.O. No. 928 of 1983

U.P. State Road Transport Corporation through
The Deputy General Manager, Northern Zone,
Bareilly.

….. **Appellant.**

Versus

1. Smt. Hira Devi W/O Sri Bhani Giri
2. Ganji Giri
3. Bhaggrath Giri Both sons of Bhani Giri,
   All resident of Odai Gaon, Patti Hulan Chanpata,
   Tehsil Darchula (Nepal) (Claimants)
4. The Collector Pithoragarh.

…… **Respondents.**

Sri A.N. Sharma, & Ramji Srivastava, learned counsel for the appellant.
Sri Lokendra Dobhal, Adv. learned counsel for the claimant-respondents.

With

Cross Objection U/O 41, Rule 22 CPC

Smt. Heera Devi widow of Bhani Giri and 2 others

…. **Claimant-Cross objectors.**

Date April 27, 2006

PC : Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 110-D of the Motor Vehicles Act, 1939 (***in short the Act***) against the judgment and award, dated 20-9-1983, passed by the Motor Accidents Claims Tribunal/District Judge, Pithoragarh (***in short the Tribunal***), in M.A.C. Case No. 18 of 1982, Smt Hira Devi and others Vs. U.P.S.R.T.C., whereby the learned Tribunal has allowed the claim petition and decreed the claim for compensation of Rs. 43,010/- along with interest @ 6% per annum from the date of application till payment as mentioned in the order. Aggrieved, the U.P.S.R.T.C.-appellant has come up in appeal. On the other hand,

the claimant-respondents have filed cross-objection in this appeal for enhancement of compensation amount, which shall be dealt with in the later part of the judgment at appropriate place.

Brief facts of the case are that Sri Bhani Giri, husband of the claimant no.1, aged 26 years and a hotel runner in Mahendra Nagar (Nepal) earning Rs. 1450/- per month in Nepal Currency lost his life due to accidental injuries suffered by him in a motor vehicle accident, which occurred on 12-8-1981 at about 10 a.m. within the limit of P.S. Pithoragarh due to rash and negligent driving by the driver of bus No. UTF-7444 belonging to U.P.S.R.T.C. In this accident as many as 43 persons died. The claimants who are legal heirs and dependents of the deceased filed claim petition for compensation of Rs. 3,27,200 on different counts as mentioned in Annexure-A to the petition.

The owner of the vehicle UPSRTC filed its written statement asserting therein that the passengers were already cautioned by vide publication that in case he driver of the vehicle was found drunk, they should stop him from driving. The O.P. has admitted the accident resulting in the death of 40 persons on the spot, but pleaded that the compensation claimed was excessive.

The O.P. No.2 Collector Pithoragarh filed separate written statement and alleged that for this accident amount of Rs. 10,389.61 was paid as compensation to the claimant on 5.9.1981. It was pleaded that the Collector has no concerned with the claim petition for compensation.

The learned Tribunal framed necessary issues in the case and recorded the evidence led by the parties. On the issue of rash and negligent driving, the learned Tribunal has held that the accident in question was caused due to rash and negligent driving by the driver of the bus. On the point of quantum of compensation, the learned Tribunal after perusing the evidence has come to the

conclusion that the income of the deceased must have been Rs. 500/- per month from the hotel running business. Out of this amount, sum of Rs. 150/- per month was deducted towards personal expenses and loss of dependency was assessed as 350 x 12 =Rs. 4200/- per annum. The Tribunal was of the view that the age of the deceased being 26 years, he would have assisted his family for a period of 34 years, thereby total compensation was worked out as Rs. 1,42,800/-. However, on the basis of submission made by the appellant regarding uncertainties of life, the Tribunal has held that the amount of compensation be reduced to Rs. 72,400/- and after deducting 1/3rd towards lump-sum payment, the loss of dependency was held to be Rs. Rs. 48,400/-. Amount of Rs. 5,000/- was awarded towards loss of consortium and loss of love and affection, thereby the compensation was assessed at Rs. 53,400/- and after adjusting the amount of Rs. 10,390/- received from the Collector, the Tribunal has ultimately decreed the claim petition for compensation of Rs. 43,010/-.

In this appeal, the impugned award has been assailed on the ground that the finding of the tribunal on the point of rash and negligent driving is not based on evidence and the quantum of compensation is excessive.

On the other hand, the claimants have filed cross-objection on the ground that the amount of compensation is inadequate and improper.

I have heard the submissions made by the learned counsel for the rival parties and have perused the entire record including the lower Court record.

Before the learned Tribunal, the claimants filed certified copy of the statement of Sri Ravindra Prasad recorded in Motor Accident Claim Case No. 36 of 1982 arising out of the same accident. The learned counsel for the appellant has admitted the

genuineness of this paper. Hence it was not required to be proved in view of provision of Section 58 of the Evidence Act. Ravindra Prasad was an eye witness, who was traveling by the ill-fated bus. He had given categorical statement on the issue of rash and negligent driving by the driver of the bus. His statement remained unshaken in cross-examination. The appellant has not led any such evidence in rebuttal which could suggest that the statement given by eye witness Ravindra Prasad was not reliable and that the accident occurred otherwise than rashness and negligence on the part of the driver. The finding recorded by the Tribunal does not suffer from any infirmity and the same is based on material on record.

So far as the contention of the appellant that the compensation awarded is excessive. It was argued that the learned Tribunal has applied multiplier of 34. It is without any footing. Admittedly the motor accident occurred as far back as in the year 1981. In my view, the Tribunal had assessed compensation to the tune of Rs. 1,42,800/-, but ultimately, the Tribunal reduced the amount of compensation to Rs. 72,400/- only and out of this amount, 1/3rd deduction was made towards lump sum payment. The claim petition was decreed for compensation of Rs. 43,010/- as narrated earlier. From no stretch of imagination, it can be held that this amount of compensation is excessive. Taking into consideration all the facts and circumstances of the case I am of the view that the compensation of Rs.43,010/- along with interest @ Rs. 6% per annum determined by the learend Tribunal is just and proper. Accordingly, I hold that the quantum of compensation fixed by the Tribunal does not require any interference by this Court.

In view of the discussion aforesaid, the cross-objection preferred on behalf of the claimants also lacks merit and is liable to be dismissed.

The appeal is hereby dismissed. Cross-objection preferred by the claimants is also dismissed. The impugned judgment and award dated 20-9-1983 is upheld. No order as to costs.

The amount in deposit with this Court, if any, be remitted to the Motor Accident Claims Tribunal Pithoragarh for being paid to the claimants.

(B.S. Verma, J.)

RCP